IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

Second Appeal No. 403/2001
(Old No. 1297 of 2000)

Hari Datt Bhatt S/o Gauri Datt Bhatt,
R/o Banbasa, Tehsil Khatima,
District Nainital … Appellant

Versus

1- Brij Mohan
2- Ram Mohan
3- Jag Mohan
Sons of Rameshwar Dayal,
All R/o Banbasa, Tehsil Khatima
District Nainital … Respondents.

Sri Rajendra Dobhal, learned counsel for the appellant.
Sri B.D. Upadhyaya, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This Second Appeal, U/S 100 C.P.C., has been preferred by the plaintiff/ appellant against the judgment and decree dated 27-7-2000, passed by District Judge, Udham Singh Nagar, in Civil Appeal No. 3 of 1998, Brij Mohan Vs. Hari Datt Bhatt and others, partly allowing the appeal and setting aside the judgment and decree dated 25-9-1998, passed by Civil Judge (J.D.) Khatima in O.S. No. 28/1991.

2- Perusal of the record shows that the plaintiff/appellant filed a suit against the defendants for permanent injunction with the allegations that he was sanctioned three lease-hold plots by the State of U.P. in Banbasa for residential and commercial purposes through registered instruments. The defendant Brij Mohan encroached upon some part of this land and also raised pucca constructions over it. When the defendant did not remove his illegal constructions, suit was filed. The case of the defendant Brij Mohan is that he is residing in the Kham land since 1970, which is separate from plaintiff's lease land.

3- The Addl. Civil Judge (J.D), Khatima, on the basis of pleadings of parties framed relevant issued and thereafter parties led

evidence in support of their cases. The learned Addl. Civil Judge (J.D.) after perusing the material on record and having heard learned counsel for the parties, partly decreed the suit and restrained the defendants from interfering in the peaceful possession of plaintiff's lease hold land and the land measuring 21- 3/5 feet x 60 feet situated in southern side of lease hold land.

4- Feeling aggrieved, the defendants filed appeal before the District Judge Udham Singh Nagar. The lower appellate court vide impugned judgment and decree dated 27-7-2000 partly allowed the appeal. The judgment and decree passed by the trial court restraining them from interfering in the possession with regard to the land measuring 21-3/5 feet x 60 feet situated in the southern side of the lease hold land of the plaintiff, was set aside. However the direction issued with regard to the lease hold land of the plaintiff was upheld.

5- Being aggrieved from the judgment and decree dated 27-7 2000 passed by the lower appellate court, this second appeal has been preferred.

6- Heard learned counsel for the parties and perused the record.

7- After a careful consideration of the finding recorded by the lower appellate court, I find that no substantial question of law is involved in this second appeal. It is the admitted case of the parties that the plaintiff was sanctioned three leasehold plots by the State on 16-12-65, 12-3-76 and 10-3-76. So far as the land measuring 21- 3/5 feet x 60 feet towards the south of the lease hold land is concerned, State has initiated proceedings for eviction and the learned lower appellate court was justified in holding that the injunction cannot be granted for this land.

8- The lower appellate court has recorded concurrent finding of facts and in second appeal the finding of facts cannot be interfered.

with. I do not find any infirmity and illegality in the finding of the lower appellate court.

9- The appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: 22-9-2006
ISB